

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DONALD J. THOMPSON, III,	§
	§ No. 415, 2010
Petitioner Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
DEPT. OF CORRECTION,	§ C.A. No. N10M-04-010
RECORDS DEPARTMENT,	§ Cr. ID No. 0312016592
	§
Respondent Below-	§
Appellee.	§

Submitted: November 15, 2010

Decided: December 8, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices

ORDER

This 8th day of December 2010, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The petitioner-appellant, Donald J. Thompson, III, filed an appeal from the Superior Court's June 14, 2010 order dismissing his petition for a writ of mandamus. The respondent-appellee, the State of Delaware, has moved to affirm the Superior Court's judgment on the ground that it is

manifest on the face of the opening brief that the appeal is without merit.¹

We agree and affirm.

(2) The record reflects that, in 2004, Thompson was convicted of Attempted Robbery in the First Degree, Burglary in the First Degree, Possession of a Firearm During the Commission of a Felony, Carrying a Concealed Deadly Weapon and Resisting Arrest. He was sentenced to a total of twenty years at Level V, effective as of December 24, 2003, to be suspended after eleven years for decreasing levels of supervision. On May 4, 2004 and again on October 4, 2004, Thompson was found to have committed violations of probation (“VOPs”). He received VOP sentences of three months at Level V and sixty days at Level V, respectively.

(3) Thompson filed a petition for a writ of mandamus in the Superior Court on the ground that the Department of Correction (“DOC”) improperly changed the effective date of his original sentence. The Superior Court held an evidentiary hearing on June 14, 2010, in which Thompson participated by video. In its order dismissing Thompson’s petition for a writ of mandamus, the Superior Court re-calculated the time remaining on Thompson’s sentences and concluded that, even though the DOC had changed the original effective date of Thompson’s sentences, it had

¹ Supr. Ct. R. 25(a).

nevertheless correctly calculated the time remaining on the sentences and actually had given Thompson credit for an additional six days to which he was not entitled.

(4) In this appeal, Thompson claims that the Superior Court improperly granted the State's motion to dismiss his petition for a writ of mandamus because the DOC improperly changed the start date of his sentences without authorization from the Superior Court. Thompson asks that DOC be ordered to correct his sentencing order to reflect the original effective date and be admonished against unilaterally altering a Superior Court sentencing order.

(5) A writ of mandamus is an extraordinary remedy issued by a court to compel an administrative agency to perform a duty.² As a condition precedent to the issuance of the writ, the petitioner must demonstrate that a) he has a clear right to the performance of the duty; b) no other adequate remedy is available; and c) the administrative agency has arbitrarily failed or refused to perform its duty.³

(6) The Superior Court properly concluded that there was no basis for the issuance of a writ of mandamus in this case. Thompson has failed to demonstrate a clear right to the performance of a duty on the part of the

² *Clough v. State*, 686 A.2d 158, 159 (Del. 1996); Del. Code Ann. tit. 10, §564.

³ *Id.*

DOC. Moreover, Thompson has failed to demonstrate that the DOC has arbitrarily failed or refused to perform a duty owed to him.

(7) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice